HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.: 23 of 2007
Decided on: 14.11.2007

Sainik School (Board of Governors) and another .....Appellants.

Versus

Ghambir Chand .....Respondent.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellants: Mr.Sandeep Sharma, Assistant Solicitor General of India.

For the respondent: Mr.C.N. Singh, Advocate.

Per V.K. Ahuja, J:

This is a Letters Patent Appeal filed by the appellants against the judgment of the learned Single Judge, dated 22.3.2007, vide which the writ petition filed by the respondent was allowed as against the appellants.

Briefly stated the facts of the case are that the respondent was serving in Sainik School, Sujanpur Tira, District Hamirpur as a Class-IV employee. He had submitted his date of birth at the time of regularization of his services on 1.9.1981. A complaint was received as against the respondent in October, 1999

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

from the elder daughter-in-law of the respondent, namely, Veena Devi that the respondent has given his date of birth wrongly and though he was born in the year 1937, he has given his year of birth as 1947. The appellants conducted inquiry, issued a show cause to the respondent and thereafter, after holding an inquiry, the penalty of compulsory retirement was imposed upon the respondent. The respondent preferred an appeal to the Chairman, Local Board of Administration, Sainik School Society and his appeal was rejected by the authorities.

The respondent filed a Civil Writ Petition challenging the impugned order of the authorities compulsorily retiring him and about rejection of his appeal. The main ground taken by the respondent was that the principles of natural justice have not been followed and no copy of the inquiry report was supplied to him and accordingly, the impugned orders are liable to be quashed.

The learned Single Judge, after considering the record and hearing the parties, set aside the orders passed by the appellants mainly on the ground that the material taken on record and relied upon by the Inquiry Officer ought to have been supplied to the respondent alongwith the findings of the Inquiry Officer, which presumably was against him. The non-supply of the inquiry report was held to be in clear violation of the rules as referred to in the impugned judgment.

While assailing the order passed by the learned Single Judge, the learned counsel for the appellants had submitted that it was pleaded in the reply filed by them to the writ petition that all the necessary documents were supplied to the respondent before the order of compulsory retirement was passed against him, including the report of the Inquiry Officer, which was also supplied. The

same plea was also taken by the learned counsel for the appellants while filing the appeal that all the documents were supplied to the respondent. However, during the course of the arguments, the learned counsel for the appellants failed to show any specific allegations in the reply filed to the writ petition by the appellants or in the LPA filed before this Court that a specific plea was taken that the copy of the inquiry report was supplied to the respondent before passing the order of compulsory retirement as against him. The allegations made were general in nature that all the documents were supplied but there was no specific reference to the copy of the inquiry report either in the reply filed to the writ petition or in the present LPA filed by the appellants. Thus, the appellants have failed to substantiate this point before the learned Single Judge or before this Court that the copy of the inquiry report was also supplied to the respondent before passing the orders against him.

The learned counsel for the appellants sought time to produce the record showing that the copy of the inquiry report was in fact supplied to the respondent. This record cannot be allowed to be produced at this stage before this Court since it was never produced before the learned Single Judge nor the copy of the documents was placed on record before the learned Single Judge or before this Court. Therefore, this plea of the learned counsel for the appellants is repelled being devoid of any force.

A perusal of the final order passed by the learned Single Judge shows that it was observed that the appellants shall furnish copy of the inquiry report to the respondent and thereafter, they can take all consequential actions in accordance with law. The said order passed by the learned Single Judge does not suffer from any infirmity to be interfered with and the direction is only to

supply the copy of the inquiry report to the delinquent employee and pass appropriate orders in accordance with law, which findings do not call for an interference by this Court in the Letters Patent Appeal filed by the appellants. There is no merit in the appeal filed by the appellants, which is dismissed accordingly. The time, which was granted by the learned Single Judge to conclude the inquiry proceedings, is further extended by four months from today. No order as to costs.

CMP No.418 of 2007:

In view of the final disposal of the main appeal, this application also stands disposed of.

(V.K. Ahuja), J. **(Deepak Gupta), J.**

November 14, 2007.
(TILAK)